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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 MONSTER ENERGY COMPANY,
12 a Delaware corporation,

13 Plaintiff,

14 vs.

15 VITAL PHARMACEUTICALS, INC.,
16 d/b/a VPX Sports, a Florida corporation;
and JOHN H. OWOC a.k.a. JACK
OWOC, an individual,

17 Defendants.
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Case No. 5:18-cv-1882-JGB-SHK

**~~[PROPOSED]~~ THIRD AMENDED
STIPULATED PROTECTIVE
ORDER**

Judge: Hon. Jesus G. Bernal
Trial: August 4, 2022

1 This Third Amended Stipulated Protective Order (“Stipulated Protective
2 Order”) supersedes and replaces the previously operative protective order entered in
3 this action (ECF 705).

4 **1. PURPOSES, LIMITATIONS, AND GOOD CAUSE**

5 **A. Purposes and Limitations**

6 Discovery in this action is likely to involve production of confidential,
7 proprietary, competitively sensitive, or private information for which special
8 protection from public disclosure and from use for any purpose other than
9 prosecuting this litigation may be warranted. Accordingly, the parties hereby
10 stipulate to and petition the Court to enter the following Stipulated Protective Order.
11 The parties acknowledge that this Order does not confer blanket protections on all
12 disclosures or responses to discovery and that the protection it affords from public
13 disclosure and use extends only to the limited information or items that are entitled to
14 confidential treatment as set forth in this Stipulated Protective Order and as
15 otherwise permissible under the applicable legal principles. The parties further
16 acknowledge, as set forth in Section 12.1, below, that this Stipulated Protective
17 Order does not entitle them to file confidential information under seal; rather, Civil
18 Local Rule 79-5 sets forth the procedures that must be followed and the standards
19 that will be applied when a party seeks permission from the court to file material
20 under seal.

21 **B. Good Cause Statement**

22 This action is likely to involve trade secrets, valuable research, development,
23 commercial, financial, technical and/or proprietary information for which special
24 protection from public disclosure and from use for any purpose other than
25 prosecution, defense, and resolution of this action is warranted. Concerns about the
26 release of this confidential materials and information is especially pronounced in this
27 case because the Plaintiff alleges that it and the Defendants are direct competitors.
28 Such confidential materials and information consists of, among other things,

documents, testimony, information or other things that the Designating Party (as defined below) believes, in good faith, contain (1) confidential business, financial, personal, or commercial information or competitively-sensitive information not customarily disclosed to the general public; or (2) any third-party documents, testimony or information or other things that the third party currently maintains as confidential, seeks to maintain as confidential for purposes of the above-captioned action, and the disclosure of which may have the effect of causing harm to the third-party persons, firm, partnership, corporation or organization from which the documents, testimony or information was obtained. Confidential information shall also include business negotiations and/or dealings, business agreements, financial information, financial transactions, information regarding confidential business practices, confidential research and development about the entities' products, commercial information, information implicating privacy rights of third parties, information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law.

Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: this pending federal lawsuit.

1 2.2 Challenging Party: a Party or Non-Party that challenges the designation
2 of information or items under this Order.

3 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
4 how it is generated, stored or maintained) or tangible things that qualify for
5 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
6 Good Cause Statement. Such information may consist of, without limitation, (1)
7 testimony given in this Action by any Party (as defined below) or by any third party
8 (whether oral, in writing, or via videotape); (2) documents produced in this action by
9 any party or by any third
10 party; (3) written discovery responses given by any Party; (4) any documents or
11 pleadings filed with the Court which attach, contain or disclose any such
12 “CONFIDENTIAL” Information; and (5) the information contained within such
13 documents, testimony or discovery responses so properly designated.

14 2.4 “HIGHLY CONFIDENTIAL-ATTORNEY’S EYES ONLY” shall be
15 limited to such documents, testimony, information or other things that the
16 Designating Party believes, in good faith, contain information the disclosure of
17 which is likely to cause substantial harm to the competitive position of the
18 Designating Party, contain information subject to the right of privacy of any person,
19 or contain information alleged to be a trade secret. None of the restrictions set forth
20 in this Stipulated Protective Order shall apply to any documents or other information
21 that are or become public knowledge by means not in
22 violation of the provisions of this Stipulated Protective Order, or any law or statute.

23 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
24 their support staff).

25 2.6 Designating Party: a Party or Non-Party that designates information or
26 items that it produces in responses to discovery, disclosures, or otherwise as
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEY’S EYES
28 ONLY.”

1 2.7 Disclosure or Discovery Material: all items or information, regardless of
2 the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 2.8 Expert: a person with specialized knowledge or experience in a matter pertinent
6 to the litigation who (1) has been retained by a Party or its counsel to serve as an
7 expert witness or as a consultant in this Action, (2) is not a current employee of a
8 Party or competitor of a Party, and (3) at the time of retention, is not anticipated to
9 become an employee of a Party or competitor of a Party.

10 2.9 House Counsel: attorneys who are employees of a party to this Action.
11 House Counsel does not include Outside Counsel of Record or any other outside
12 counsel.

13 2.10 Non-Party: any natural person, partnership, corporation, association, or
14 other legal entity not named as a Party to this Action.

15 2.11 Outside Counsel of Record: Hueston Hennigan LLP for Plaintiff
16 Monster Energy Company; Gordon Rees Scully Mansukhani, LLP and Quarles &
17 Brady for Defendant Vital Pharmaceuticals, Inc.; The Boesch Law Group for
18 Defendant John H. Owoc.

19 2.12 Party: any party to this Action, including all of its officers, directors,
20 employees, consultants, retained experts, and Outside Counsel of Record (and their
21 support staffs).

22 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this Action.

24 2.14 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium)
27 and their employees and subcontractors.
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1 2.15 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEY’S
3 EYES ONLY.”

4 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
5 from a Producing Party.

6 **3. SCOPE**

7 The protections conferred by this Stipulation and Order cover not only
8 Protected Material (as defined above), but also (1) any information copied or
9 extracted from Protected Material; (2) all copies, excerpts, summaries, or
10 compilations of Protected Material; and (3) any testimony, conversations, or
11 presentations by Parties or their Counsel that might reveal Protected Material.
12 However, the protections conferred by this Stipulated Protective Order do not cover
13 the following information: (1) any information that is in the public domain at the
14 time of disclosure to a Receiving Party or becomes part of the public domain after its
15 disclosure to a Receiving Party as a result of publication not involving a violation of
16 this Order, including becoming part of the public record through trial or otherwise;
17 and (2) any information known to the Receiving Party prior to the disclosure or
18 obtained by the Receiving Party after the disclosure from a source who obtained the
19 information lawfully and under no obligation of confidentiality to the Designating
20 Party.

21 Any use of Protected Material at trial shall be governed by the orders of the
22 trial judge. This Order does not govern the use of Protected Material at trial.

23 **4. DURATION**

24 Even after final disposition of this litigation, the confidentiality obligations
25 imposed by this Order shall remain in effect until a Designating Party agrees
26 otherwise in writing or a court order otherwise directs. Final disposition shall be
27 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
28 or without prejudice; and (2) final judgment herein after the completion and

1 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
2 including the time limits for filing any motions or applications for extension of time
3 pursuant to applicable law.

4 **5. DESIGNATING PROTECTED MATERIAL**

5 5.1 Designating Material for Protection. Parties and Non-Parties may
6 designate Discovery Material as “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL-ATTORNEY’S EYES ONLY” where the material meets the
8 requirements listed in Sections 2.3 and 2.4, above.

9 5.2 Exercise of Restraint and Care in Designating Material for Protection.

10 Each Party or Non-Party that designates information or items for protection under
11 this Order must take care to limit any such designation to specific material that
12 qualifies under the appropriate standards. To the extent it is practical to do so, the
13 Designating Party must designate for protection only those parts of material,
14 documents, items, or oral or written communications that qualify so that other
15 portions of the material, documents, items, or communications for which protection
16 is not warranted are not swept unjustifiably within the ambit of this Order.

17 Designations that are shown to be clearly unjustified or that have been made
18 for an improper purpose (e.g., to unnecessarily encumber the case development
19 process or to impose unnecessary expenses and burdens on other parties) may expose
20 the Designating Party to sanctions.

21 If it comes to a Designating Party’s attention that information or items that it
22 designated for protection do not qualify for protection, that Designating Party must
23 promptly notify all other Parties that it is withdrawing the inapplicable designation.

24 5.3 Any Party May Designate Information Produced by Other Party. Any
25 Party may designate information or documents disclosed by another Party or Non-
26 Party as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEY’S EYES
27 ONLY” pursuant to this Order by so indicating in writing within 21 days after receipt
28 of said information or documents, providing an identification by relevant document

1 numbers or other means of the document or information (or portion thereof) to be so
2 designated.

3 5.4 Manner and Timing of Designations. Disclosure or Discovery Material that
4 qualifies for protection under this Order must be clearly so designated before the material is
5 disclosed or produced.

6 Designation in conformity with this Order requires:

7 a) for information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),
9 that the Producing Party affix at a minimum, the legend “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL-ATTORNEY’S EYES ONLY” to each page that contains protected
11 material. If only a portion or portions of the material on a page qualifies for protection, the
12 Producing Party also must clearly identify the protected portion(s) by making appropriate
13 markings in the margins or by some other method that clearly designates such portions as
14 Protected Material.

15 A Party or Non-Party that makes original documents available for inspection need
16 not designate them for protection until after the inspecting Party has indicated which
17 documents it would like copied and produced. During the inspection and before the
18 designation, all of the material made available for inspection shall be deemed
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEY’S EYES ONLY.” After
20 the inspecting Party has identified the documents it wants copied and produced, the
21 Producing Party must determine which documents, or portions thereof, qualify for
22 protection under this Order. Then, before producing the specified documents, the Producing
23 Party must affix the “CONFIDENTIAL” or “HIGHLY CONFIDENTIALATTORNEY’S
24 EYES ONLY” legend to each page that contains Protected Material. If only a portion or
25 portions of the material on a page qualifies for protection, the Producing Party also must
26 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
27 margins).

1 b) for testimony given in depositions or in other pretrial proceedings, that
2 the Designating Party identify the Disclosure or Discovery Material on the record, before
3 the close of the deposition, hearing, or other proceeding, all protected testimony and specify
4 the level of protection being asserted. When it is impractical to identify separately each
5 portion of testimony that is entitled to protection and it appears that substantial portions of
6 the testimony may qualify for protection, the Designating Party may invoke on the record
7 (before the deposition, hearing, or other proceeding is concluded) a right to have up to 21
8 days after receipt of a certified transcript to identify the specific portions of the testimony as
9 to which protection is sought and to specify the level of protection being asserted. Only
10 those portions of the testimony that are appropriately designated for protection within the
11 21 days shall be covered by the provisions of this Stipulated Protective Order.

12 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
13 afterwards if that period is properly invoked, that the entire transcript shall be treated as
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEY’S EYES ONLY.”

15 The use of a document as an exhibit at a deposition shall not in any way affect its
16 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEY’S EYES
17 ONLY.”

18 Deposition transcript pages that reflect Protected Material must be separately bound
19 by the court reporter and may not be disclosed to anyone except as permitted under this
20 Order. The Designating Party shall inform the court reporter of these requirements.

21 c) for information produced in some form other than documentary and for
22 any other tangible items, that the Producing Party affix in a prominent place on the exterior
23 of the container or containers in which the information is stored the legend
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEY’S EYES ONLY.” If
25 only a portion or portions of the information warrants protection, the Producing Party, to
26 the extent practicable, shall identify the protected portion(s).

1 5.5 Inadvertent Failures to Designate. If corrected within twenty-one (21) days
2 after learning of the inadvertent failure to designate, an inadvertent failure to designate
3 qualified information or items does not, standing alone, waive the Designating Party's right
4 to secure protection under this Order for such material. Upon timely correction of a
5 designation, the Receiving Party must make reasonable efforts to assure that the material is
6 treated in accordance with the provisions of this Order.

7 The Producing Party may subsequently designate Discovery Material as Protected
8 Material in the following manner: (a) the Producing Party must give prompt, written notice
9 to Outside Counsel for the Party to whom such documents, testimony, or other information
10 have been disclosed informing them that the information produced is designated Protected
11 Material; (b) Outside Counsel receiving notice of newly designated documents, testimony
12 or other information, shall take reasonable steps to comply with such new designation,
13 including reasonable steps to retrieve any documents distributed inconsistent with such new
14 designation, but shall not be responsible for any disclosure to non-parties occurring before
15 receipt of notice; and (c) at its own expense, the Designating Party will provide the Party
16 receiving the notice with another copy of the documents, deposition testimony, or other
17 information that bears the appropriate designation.

18 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
20 of confidentiality at any time. Unless a prompt challenge is necessary to avoid foreseeable
21 substantial unfairness, unnecessary substantial economic burdens, or a significant
22 disruption or delay of the litigation, a Party does not waive its right to challenge a
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEY'S EYES ONLY"
24 designation.

25 6.2 Meet and Confer. To challenge a designation, the Challenging Party shall
26 initiate the dispute resolution process by providing the Designating Party and the Named
27 Parties with the Bates number(s) of each designation at issue ("Notice"). No more than 300
28 challenges may be raised at one time, and any additional challenges may not be brought for

1 a period of at least 5 days. Within 7 days of receipt of the Notice, the Designating Party
2 shall inform the Challenging Party of which documents it will agree to de-designate. Within
3 10 days of receipt of the Notice, the Designating Party and the Challenging Party shall
4 telephonically meet and confer to attempt to resolve each remaining challenge in good faith.
5 The parties shall attempt to resolve each challenge in good faith by conferring directly (in
6 voice to voice dialogue; other forms of communication are not sufficient).

7 6.3 Judicial Intervention. Within 12 days of receipt of the Notice, to the extent the
8 parties are not able to resolve the challenges, the Designating Party and the Challenging
9 Party shall exchange written positions relating to each remaining challenge at issue. Within
10 14 days of receipt of the Notice, to maintain the challenged designations, the Designating
11 Party shall e-mail the Court with the parties' respective written positions relating to the
12 challenged documents. Absent a showing of good cause under Federal Rule of Civil
13 Procedure 6(b), failure by the Designating Party to e-mail the Court shall automatically
14 waive the confidentiality designation for each challenged designation.

15 6.4 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. Frivolous assertions of confidentiality and/or challenges, and those made
17 for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
18 other parties) may expose the Designating Party or the Challenging Party, as the case may
19 be, to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality
20 designation, all parties shall continue to afford the material in question the level of
21 protection to which it is entitled under the Producing Party's designation until the Court
22 rules on the challenge.

23 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this Action
26 only for prosecuting, defending, or attempting to settle this Action. Such Protected Material
27 may be disclosed only to the categories of persons and under the conditions described in
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1 this Order. When the Action has been terminated, a Receiving Party must comply with the
2 provisions of Section 14 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location
4 and in a secure manner that ensures that access is limited to the persons authorized under
5 this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
8 may disclose Protected Material designated “CONFIDENTIAL” only to:

9 a) the Receiving Party’s insurers and Outside Counsel of Record in this
10 Action, as well as employees of said Outside Counsel of Record to whom it is reasonably
11 necessary to disclose the information for this Action;

12 b) the officers, directors, and employees (including House Counsel) of the
13 Receiving Party to whom disclosure is reasonably necessary for this Action and who have
14 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 c) Experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 d) the court and its personnel;

19 e) court reporters, videographers, and their staff;

20 f) professional jury or trial consultants, mock jurors, and Professional
21 Vendors to whom disclosure is reasonably necessary for this Action and who have signed
22 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information;

25 h) during their depositions, witnesses, and attorneys for witnesses, in the
26 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
27 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be
28 permitted to keep any confidential information unless they sign the “Acknowledgment and

1 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
2 ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions
3 that reveal Protected Material may be separately bound by the court reporter and may not
4 be disclosed to anyone except as permitted under this Stipulated Protective Order; and

5 i) any mediator or settlement officer, and their supporting personnel,
6 mutually agreed upon by any of the parties engaged in settlement discussions.

7 7.3 Disclosure of “HIGHLY CONFIDENTIAL-ATTORNEY’S EYES ONLY”
8 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
9 Designating Party, a Receiving Party may disclose Protected Material designated
10 “HIGHLY CONFIDENTIAL-ATTORNEY’S EYES ONLY” only to the following
11 persons:

12 a) the Receiving Party’s Outside Counsel in this action;

13 b) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this Action and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 c) the court and its personnel;

17 d) court reporters and videographers and their staff;

18 e) professional jury or trial consultants, mock jurors, and Professional
19 Vendors to whom disclosure is reasonably necessary for this Action and who have signed
20 the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

21 f) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information; and

23 g) any mediator or settlement officer, and their supporting personnel,
24 mutually agreed upon by any of the parties engaged in settlement discussions.

25 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
26 **IN OTHER LITIGATION**

1 If a Party is served with a subpoena or a court order issued in other litigation that
2 compels disclosure of any information or items designated in this Action as Protected
3 Material, that Party must:

4 a) promptly notify in writing the Designating Party. Such notification shall
5 include a copy of the subpoena or court order;

6 b) promptly notify in writing the party who caused the subpoena or order to
7 issue in the other litigation that some or all of the material covered by the subpoena or
8 order is subject to this Protective Order. Such notification shall include a copy of this
9 Stipulated Protective Order; and

10 c) cooperate with respect to all reasonable procedures sought to be pursued
11 by the Designating Party whose Protected Material may be affected.

12 If the Designating Party timely seeks a protective order, the Party served with the
13 subpoena or court order shall not produce the Protected Material before a determination by
14 the court from which the subpoena or order issued that the Protected Material must be
15 produced, unless the Party has obtained the Designating Party's permission. The
16 Designating Party shall bear the burden and expense of seeking protection in that court of
17 its confidential material and nothing in these provisions should be construed as authorizing
18 or encouraging a Receiving Party in this Action to disobey a lawful directive from another
19 court.

20 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
21 **IN THIS LITIGATION**

22 a) The terms of this Order are applicable to information produced by a
23 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
24 produced by Non-Parties in connection with this litigation is protected by the remedies and
25 relief provided by this Order. Nothing in these provisions should be construed as
26 prohibiting a Non-Party from seeking additional protections.

b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party, if requested.

c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify the Designating Party in writing what was disclosed and to whom, (b) use its best efforts to retrieve all Protected Materials improperly disseminated, including all copies, (c) inform the person or persons to whom such unauthorized disclosures were made of all the terms

of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

The inadvertent disclosure of a document that a Producing Party believes is subject to privilege or work product protection shall not constitute a waiver or estoppel of any such privilege or protection. In the event of such inadvertent disclosure, the producing party may provide written notice of same and request that all copies of any such documents be returned, whereupon the Receiving Party shall return all copies of such documents, delete them from its files, destroy all notes or other work product that reflect them, and shall not use the documents in any way.

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an ediscovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. FILING PROTECTED MATERIAL IN COURT.

12.1 Filing Protected Materials. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

12.2 This Order does not govern the treatment of Protected Material at trial, which

shall be raised by the parties but separately addressed by the Court.

13. MISCELLANEOUS

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

14. FINAL DISPOSITION

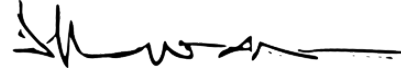
After the final disposition of this Action, as defined in Section 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

15. Any violation of this Order may be punished by any and all appropriate

1 measures including, without limitation, contempt proceedings and/or monetary sanctions.

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3 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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5 DATED: 08/22/2023



6 Shashi H. Kewalramani
7 United States Magistrate Judge
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